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February 7, 1997

BY HAND DELIVERY
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: MM Docket No. 91-221
Review of the Commission's Regulations
Governing Television Broadcasting

Dear Mr. Caton:

Transmitted herewith on behalf of Pappas Stations Partnership, are an original and four copies of its comments in response to the *Second Further Notice of Proposed Rule Making*, FCC 96-438 (released November 7, 1996), in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,

Andrew S. Kersting
Counsel for Pappas Stations Partnership

Enclosures

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Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations	)	MM Docket No. 91-221
Governing Television Broadcasting	)	

To: The Secretary

COMMENTS OF PAPPAS STATIONS PARTNERSHIP

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February 7, 1997

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SUMMARY

As demonstrated herein, the market in which television stations compete is extremely diverse and highly competitive. Due to the significant changes which have occurred in the market since the Commission's television duopoly rule was adopted, the Commission should relax its duopoly rule to permit the common ownership of two television stations in the same DMA where there is no Grade A contour overlap. The Commission also should adopt an exception to its relaxed duopoly rule for combinations involving a UHF station. Where a proposed combination involves two VHF stations, however, the Commission should permit the transaction only in unusual and compelling circumstances.

Because LMAs provide substantial public interest benefits, the Commission should follow Congress' directive and grandfather all existing LMAs. In addition, the Commission should permit existing LMAs to be renewed or extended beyond their current term without limitation. Moreover, LMAs should not be treated as an attributable interest so long as one of the stations involved is a UHF station. In the event the Commission determines that LMAs should be attributable and does not materially relax its duopoly rule, LMAs should be regarded as an exception to the duopoly rule.

With respect to the radio-television cross-ownership rule, the Commission's presumptive waiver policy should (i) be extended to any television market that satisfies the minimum independent voice test, and (ii) apply to radio-television combinations involving more than one radio station in the same service that otherwise would comply with the radio ownership rules. Furthermore, the Commission should reduce the number of required independently-owned voices that must remain after a proposed combination for stations outside the top 50 television markets.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations	)	MM Docket No. 91-221
Governing Television Broadcasting	)	

To: The Secretary

COMMENTS OF PAPPAS STATIONS PARTNERSHIP

Pappas Stations Partnership ("Pappas")[1] hereby submits these comments in response to the Commission's *Second Further Notice of Proposed Rule Making*, FCC 96-438 (released November 7, 1996) ("*Second Further Notice*"), in the above-captioned proceeding.

I. The Television Duopoly Rule

A. The Market In Which Local Television Stations Compete is Extremely Diverse and Highly Competitive.

The FCC's local television ownership rule is designed to promote diversity and foster competition among local television broadcast stations. *Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rule Making*, 10 FCC Rcd 3524, 3573-74 (1995) ("*TV Ownership Further Notice*"). The current version of the duopoly rule was

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[1] Pappas Stations Partnership, through affiliated entities, currently is the licensee of seven full-power television stations, two radio stations, two separately-programmed LPTV stations (affiliated with Univision and Fox, respectively), and currently is a party to six LMAs. For ease of reference, the affiliated entities also will be referred to herein as "Pappas."

adopted over thirty years ago,[2] at a time when three local affiliates defined the viewing options in most markets. In 1991, the FCC issued a wide-ranging report on broadcast television which observed that the market had undergone "tremendous changes" over the previous 15 years.[3] The Commission concluded that television broadcast stations now operate in three economic markets: the market for delivered video programming, the advertising market, and the video program production market.[4] As a result of the substantial increase in diversity and competition that currently exists in today's market, a combination of two local television stations no longer poses a material threat to competition or diversity.

The local advertising product market in which television stations compete includes, at a minimum, broadcast and cable television, broadcast radio, print advertising, and other non-electronic media. Indeed, one of the economic studies submitted in this proceeding states:

> [T]here is sufficient information from a variety of sources upon which to conclude that the product dimension of relevant markets for local advertising messages may well encompass all media -- including both electronic media, *e.g.*, radio, broadcast, and cable television, and nonelectronic media, *e.g.*, direct mail, newspapers, magazines, yellow pages and billboards.[5]

Another major economic study submitted to the Commission states:

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[2] *Id.* at 3528.

[3] *Id.* at 3529.

[4] *Id.* at 3535.

[5] Addanki, Beutel, and Kitt, *Regulating Television Station Acquisitions: An Economic Assessment of the Duopoly Rule*, National Economic Research Associates (May 17, 1995) at 2, submitted as Exhibit 1 to the Comments of the Local Station Operators Coalition, MM Docket No. 91-221 (filed May 17, 1995).

> The empirical evidence . . . indicates that other forms of advertising, such as yellow pages, outdoor, and direct mail, are substitutes for video, radio, and newspaper advertising.[6]

There also is increasing evidence that cable television is becoming substantially stronger and a more formidable competitor to broadcast television. In its Third Annual Report to Congress on the status of competition in the market for the delivery of video programming, the Commission recently found:

> Over the past decade, the number of television viewing hours of non-premium cable networks has grown. Comparing the 1984-85 and 1994-95 seasons, the combined, full-day audience of cable networks *increased from an 11% share to a 30% share of television viewing hours*. . . . This growth in the viewership of the cable networks has continued into the 1996/1997 season. The total prime time share of the cable networks in the first week of the 1996/1997 season increased 11% over the first week of the 1995/1996 season to 30% of viewing hours.[7]

The Third Annual Report also contains the following findings:

(i) Cable passed 92.7 million homes at the end of 1995 or 96.7% of all television households. Cable then had 62.1 million subscriber households or 67% of homes passed and an increase of 2.8%, the second largest annual increase in over 15 years.[8]

(ii) Nearly 80% of cable systems, serving 97.3% of all cable subscribers, then offered subscribers 30 or more channels. Only 5.4% of cable systems offered subscribers 12 or fewer channels. Nearly half of all subscribers are served by systems with 54 or more channels.[9]

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[6] *An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules*, Economists, Inc. (May 17, 1995) at 23.

[7] Third Annual Report, CS Docket No. 96-133, FCC 96-496 (released January 2, 1997) ("Third Annual Report") at 12 (emphasis added).

[8] *Third Annual Report* at 12.

[9] *Id.*

(iii) At the end of October, 1996, DBS served 3.82 million subscribers, who typically received between 100-200 channels of programming.[10]

(iv) Wireless cable service was available to nearly 30 million homes at the end of 1995, of which approximately 900,000 subscribed.[11]

(v) As of September, 1996, slightly over a million homes subscribed to SMATV services, a 10.5% increase over the preceding year. The average SMATV system provides nearly 40 channels of programming.[12]

(vi) Local exchange carriers and internet video providers also are entering the market.[13]

By taking advantage of larger audience shares and greater efficiencies through interconnects and clustering, cable television has achieved double-digit growth in advertising revenues. Between 1994 and 1995, cable MSO advertising revenue increased by 18.9%.[14] Double digit growth is expected to continue through 1999.[15]

In light of the extensive economic studies submitted in this proceeding, the Commission should conclude that the local advertising market consists of numerous competitors, including not only broadcast television, but radio, cable television, local newspapers, and other forms of non-electronic media. Therefore, because local advertising markets are highly competitive and can be expected only to become more so due to the ever increasing cable viewing audience and new entrants

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[10] *Id. at 20-23.*

[11] *Id.* at 31.

[12] *Id.* at 46-47.

[13] *Id.* at 39-45, 55-58.

[14] *Third Annual Report*, at 14.

[15] *The Veronis, Suhler & Associates Communications Industry Forecast* (9th ed., July, 1995) at 166.

such as MMDS and DBS, relaxation of the Commission's duopoly rule will not adversely affect competition in the local advertising market.

B. The Duopoly Rule Should be Relaxed to Permit the Common Ownership of Two Television Stations Within the Same DMA Where the Stations' Grade A Contours Do Not Overlap and In Different DMAs Even Where There Is Overlap.

The DMA is the standard market definition in the industry and has been employed by the Commission for purposes of other rules. *See, e.g.*, *Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules,* 11 FCC Rcd 6201, 6224 (1996) (Commission amended Section 76.55 of its rules to provide that Nielsen's *DMA Market and Demographic Rank Report* will be used for the 1999 must carry/retransmission consent election and subsequent election periods). As the Commission has noted, one benefit of a DMA-based definition "is that it attempts to capture actual television viewership patterns." *TV Ownership Further Notice*, 10 FCC Rcd at 3540. Stations in different DMAs compete in different television markets, regardless of whether there is Grade A overlap between the stations. Indeed, pursuant to Section 76.55 of the Commission's rules, a television station currently is considered a "local" station only in the ADI (and after 1999, DMA) in which it is located, and is presumed to serve only that television market. If stations are in different DMA's, common ownership should be permitted.

Moreover, many television markets are so large that certain stations assigned to the same DMA have no Grade A overlap and often serve different viewing audiences. For example, Station KFWU(TV), Fort Bragg, California,[16] is located in Mendocino County, which is in the northwest corner of the San Francisco-Oakland-San Jose DMA. Station KTNC(TV), Concord, California,

[16] Pappas currently is airing programming on Stations KFWU(TV), Fort Bragg, and KTNC(TV), Concord, California, pursuant to separate LMAs.

which is located in Contra Costa County, also is in the San Francisco DMA. Yet, these stations serve different viewing audiences because, not only do the stations' Grade A contours not overlap, but there is no overlap between their Grade B contours. There are many other instances where the geographical boundaries of television markets are so large that stations within the same DMA do not serve the same viewing audience. Therefore, the Commission should relax its duopoly rule to permit the common ownership of stations within the same DMA where there is no overlap between the stations' Grade A contours.

C. The Commission Should Adopt an Exception to Its Relaxed Duopoly Rule to Permit the Common Ownership of Two Stations in the Same DMA, Whose Grade A Contours Overlap, Where One of the Stations is a UHF Station.

UHF stations continue to operate at a substantial disadvantage *vis-a-vis* VHF stations. Due to their inferior signal propagation, UHF stations suffer from a coverage disadvantage which results in smaller audiences and less revenue. Their costs of operation (*e.g.*, power expenses) generally are substantially higher, and they do not share the same recognition and established competitive status that their VHF competitors enjoy, especially in intermixed markets. Although cable penetration has increased and many UHF stations are carried on local cable systems, UHF stations generally have less desirable channel positions. Thus, in light of the extremely diverse and highly competitive market in which television stations compete, the Commission should adopt an exception to its amended duopoly rule to permit the common ownership of two stations within the same DMA, even where there is Grade A overlap, so long as one of the stations is a UHF station. Indeed, in the example provided above involving Stations KFWU, Fort Bragg, and KTNC, Concord, California, although the two stations serve different geographical areas within the San Francisco DMA and different viewing audiences, together they provide complementary coverage. This is significant because it is the only means by which UHF stations such as KFWU and KTNC can compete against high-powered VHF facilities in their DMA.

D. If the FCC Adopts a Waiver Policy in Lieu of an Outright Exception to the Duopoly Rule for Combinations Involving a UHF Station, the Waiver Policy Should Presume that Common Ownership of Two Stations Within the Same Market, Where One is a UHF Station, Serves the Public Interest Absent a Compelling Demonstration of Harm to the Public Interest.

In the event the Commission does not adopt an exception to its amended duopoly rule to permit the common ownership of stations within the same DMA where one of the stations is a UHF station, but, instead, elects to adopt a waiver policy, combinations involving a UHF station should be presumed to serve the public interest absent a compelling demonstration of harm to the public interest. Such a waiver policy would permit the FCC to analyze common ownership of television stations on a case-by-case basis, yet still provide licensees with greater certainty regarding potential station acquisitions. This is significant because it is essential to the successful transferability of stations in the dynamic television marketplace. This type of waiver policy also would permit grant of many waivers without burdening applicants and the Commission's review processes with extensive waiver requests and frivolous, anti-competitive objections.

To the extent the Commission considers waiver criteria, Pappas strongly urges that any "minimum voice" test, if adopted, should encompass all forms of media, including broadcast and cable television, radio, print, and non-broadcast video media. An alternative approach would ignore practical reality, borne out by the economic studies submitted in this proceeding and Pappas' real-world experience, that non-broadcast media compete head-to-head with television stations for audiences and advertisers. For example, in the Washington, D.C. market, a well-funded cable news channel competes head-to-head with broadcast stations whose news programming is a critical economic key to their revenue base. Cable inter-connects in the suburbs surrounding Washington actively compete for advertising dollars with broadcast outlets.

Market size should not be a relevant factor in the waiver analysis because, if the Commission elects to employ a minimum voice test, it would be rendered relatively meaningless. Further, it is often in the smaller markets, where there are smaller audiences for which to compete, and therefore fewer advertising dollars to support television stations, that consolidation provides the greatest public interest benefits. In Pappas' experience, duopolies or LMAs in smaller markets prevent failing stations from going dark or operating on the margin, with little or no ability to offer expensive non-entertainment programming. They also permit activation of unbuilt permits as the fifth or sixth station in a market that realistically can support only three or four over-the-air competitors. The net gain for competition is obvious.

Furthermore, a failed-station test is overly restrictive and should not be a prerequisite for common ownership because death-bed stations do not serve the public interest. Some stations would never get on the air were it not for an LMA.[17] Moreover, requiring that stations be in severe financial difficulty or off the air before they may be acquired essentially dictates that stations air marginal programming, often for considerable periods of time, prior to their collapse. This contravenes the public interest by diminishing the availability of the very expensive and niche programming the Commission encourages, *i.e.*, news, public affairs, and children's programming. This again is

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[17] *See* example concerning Station KXVO(TV), Omaha, Nebraska, at Section IIA, *infra*.

particularly true in smaller markets where the advertising base is small and stations are more likely to struggle financially.

E. The Commission Should Permit the Common Ownership of Two VHF Stations in the Same Market Only in Unusual and Compelling Circumstances.

With respect to proposed combinations involving two VHF stations, the Commission should follow Congress' directive and adopt a policy that would permit waivers of the amended duopoly rule only in unusual and compelling circumstances. As noted above, VHF stations continue to enjoy substantial competitive advantages over UHF stations. Because many markets are comprised of both VHF and UHF stations, a proposed combination of two VHF stations inherently raises questions concerning a potential adverse impact upon competition within that market. In light of Congress' statement that VHF/VHF combinations should be permitted only in "compelling circumstances",[18] the Commission should adopt a similar standard.

In determining what constitutes "compelling circumstances," the Commission should consider failed stations and vacant allotments. There also are certain areas of the country such as Alaska, Hawaii and Puerto Rico that are relatively unique as a result of terrain, population density or viewing patterns. They therefore presumptively offer the requisite compelling circumstances necessary to warrant a VHF/VHF combination. Pappas submits, however, that compelling circumstances should rarely be found in intermixed markets.

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[18] S. Conf. Rep. 104-230, 104th Cong. 2d Sess. 163 (1996).

II. LMAs

A. Existing LMAs Should be Permanently Grandfathered and Remain Freely Assignable.

Congress has recognized the substantial public interest benefits provided by television LMAs. In enacting the Telecommunications Act of 1996, Congress clearly stated its intent for the FCC not only to grandfather existing LMAs, but continue to permit such agreements in accordance with the Commission's rules. *See* Telecommunications Act of 1996, Section 202(g).

The Commission itself has expressly approved of television LMAs, even where a broker has made substantial capital expenditures in connection with the agreement.[19] In light of Congress' directive and the Commission's decisions expressly approving of television LMAs, the Commission should not suddenly reverse course and ignore its previous decisions. There are many broadcasters who, in reliance on the Commission's decisions approving LMAs, have expended millions of dollars in an effort to construct new stations, improve existing ones, and return dark stations to the air. In order to permit the continuation of the substantial public interest benefits provided by these LMAs, as well as provide broadcasters the opportunity to recoup at least a portion of their substantial investments, the Commission should grandfather all existing LMAs and permit them to be extended or renewed beyond their current term regardless of any transfer or assignment.

As Congress found, LMAs provide substantial public interest benefits, including the following:

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[19] *See, e.g., WGPR, Inc.*, 10 FCC Rcd 8140, 8143-46 (1995) (Commission found no transfer of control where the broker made capital expenditures totaling approximately $2.3 million in equipment and improvements to the brokered station, and paid the licensee/assignor an annual brokerage fee of $1 million).

(i) program diversity by enabling the brokered station to air network programming that otherwise would not be aired within the television market;

(ii) permitting existing stations to remain on the air when they otherwise would go dark;

(iii) enabling new start-up stations to go on the air that otherwise would remain unbuilt;

(iv) enabling existing stations in poor financial condition, which are operating with deficient technical facilities and marginal programming, to improve their facilities and, in some cases, become economically viable as an independent operation;

(v) promote efficiencies in operation between the two stations which enables both stations to air more news and public affairs programming than they otherwise would be capable of providing;

(vi) providing the opportunity for the employment of additional station personnel; and

(vii) enabling emerging new networks to expand critically important distribution.

An example of the substantial public interest benefits that can be provided by an LMA is reflected in Pappas' LMA between Stations KPTM(TV) and KXVO(TV), Omaha, Nebraska.[20] Although a construction permit was issued for KXVO, the station remained unbuilt for many years. Station KPTM entered into an LMA with KXVO which enabled the new start-up station to get on the air in June 1995. The stations air completely separate programming. KPTM is a Fox affiliate and KXVO is affiliated with The WB Television Network ("The WB"). Through its affiliation with The WB, Station KXVO has brought a fifth national network to the Omaha television market.[21]

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[20] Pappas is the licensee of Station KPTM. Omaha is the 75th ranked television market. *Broadcasting & Cable Yearbook 1996*, p. C-240.

[21] The fact that KXVO is a WB affiliate is significant in itself because it has enabled The WB to gain an additional broadcast outlet in a top 100 market that it otherwise would not have had without the LMA. As the Commission is well aware, distribution is critical to the survival of a new emerging network such as The WB.

KXVO uses the KPTM news staff to air local news updates once each evening during prime time.[22] The station also recently aired three one-hour forums during prime time involving Congressional and mayoral candidates and has plans for more such programming. Moreover, due to its affiliation with The WB, KXVO airs a significant amount of children's and family programming, including FCC-friendly children's programming, which contributed to the station receiving a 4 share in the most recent ratings book.[23] In addition to its diversity and programming benefits, the efficiencies of operation created through the LMA enabled Station KXVO to become profitable within the first 90 days of going on the air despite the hiring of 12 new employees.[24]

Another example of an LMA providing public interest benefits is the LMA between Station WASV-TV, Asheville, North Carolina, and Station WSPA-TV, Spartanburg, South Carolina. Pappas is the licensee of Station WASV-TV, and is brokering the station's time to WSPA-TV.[25] Pappas returned WASV-TV to the air, but has had to operate the station with far less than maximum facilities. Through the funds provided under the LMA, Pappas is in the process of constructing a substantially taller tower that will permit WASV-TV to increase its technical facilities such that the station will be able to cover a much greater portion of the Greenville-Spartanburg market.[26]

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[22] Station KXVO will begin airing its own newscasts within the next year.

[23] Nielsen's *DMA Market and Demographic Rank Report*, November, 1996.

[24] If Station KXVO had not been operating pursuant to an LMA, it likely would have taken four or five years for the station to become profitable.

[25] The licensee of Station WSPA-TV is prohibited from acquiring WASV-TV by the Commission's current duopoly rule.

[26] The Greenville-Spartanburg-Asheville-Anderson market is the 35th ranked television market. *Broadcasting & Cable Yearbook 1996*, p. C-239.

WASV-TV has purchased competitive syndicated programming and soon will become a WB affiliate.

Furthermore, Pappas presently is airing programming on Station KTVG(TV), Grand Island, Nebraska, pursuant to an LMA with the licensee of that station. Pappas also has an LMA with Station KHGI-TV, Kearney, Nebraska, is an ABC affiliate in the same market. Because KTVG-TV is a Fox affiliate, the stations air substantially different programming. Station KTVG has been operating from a 200-foot tower and has been able practically to cover only a portion of Grand Island, as essentially an LPTV facility. But, as a result of the LMA, KTVG has applied for a construction permit to move to a substantially taller tower which will enable the station to provide Fox programming to a wide area in the large Lincoln market.[27] Moreover, the stations employ separate traffic, operations, and maintenance staffs which has resulted in the hiring of additional employees.

Pappas also is airing programming on Stations KFWU(TV), Fort Bragg, and KTNC(TV), Concord, California, pursuant to separate LMAs. Station KFWU is located in Mendocino County, which is in the northwest corner of the San Francisco DMA. Due to its location, KFWU could not survive as a stand-alone facility and previously operated as a satellite of Station KRCR-TV, Redding, California. Together, however, the two stations serve different geographical areas within the San Francisco DMA, and provide complementary coverage. As stated above, this is the only means by which UHF stations such as KFWU and KTNC can compete against high-powered VHF facilities, usually in the central city of their market. Moreover, through their respective LMAs, KFWU

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[27] The Lincoln-Hastings-Kearney DMA is the 101st ranked television market. *Broadcasting & Cable Yearbook 1996*, p. C-240.

currently is airing ten minutes per day of local Mendocino County news, and KTNC is airing its own locally-produced religious program.

The above examples are merely a small sample of the substantial public interest benefits provided by LMAs. If the Commission were to ignore its previous decisions approving LMAs and refuse to grandfather existing LMAs, it would preclude the substantial public interest benefits outlined above and work a grave injustice upon those broadcasters who have expended substantial sums in reliance upon the Commission's previous pronouncements.

In the event the FCC should determine that LMAs involving a UHF station should be attributable interests, the Commission should make an exception for those agreements entered into prior to November 5, 1996. The Commission also should allow LMAs even where the duopoly rules are not substantially relaxed, provided that one of the stations in the LMA is a UHF station, and the LMA serves competitive and diversity goals. Indeed, there has been no evidence submitted to the Commission in this proceeding to even suggest that any LMA has resulted in an abuse of market power or a pattern of unauthorized transfers of control. Therefore, regardless of whatever action the Commission may take in this proceeding with respect to duopolies, the Commission should follow Congress' directive and grandfather all existing LMAs, permit them to be extended or renewed beyond their current term regardless of any transfer or assignment, and allow new ones where the public interest dictates.

III. Radio-Television Cross-Ownership Rule

A. The Presumptive Waiver Policy Should be Extended to Any Television Market that Satisfies the Minimum Independent Voice Test.

Section 202(d) of the Telecommunications Act of 1996 ("1996 Act") directs the FCC to extend its radio-television cross-ownership waiver policy from the top 25 television markets to the top 50 markets. The 1996 Act also significantly liberalized the local radio ownership limits, permitting an entity to own up to as many as eight commercial stations in the largest markets. These statutory changes reflect Congress' conclusion that the local broadcasting market is much more diverse than it was at the time the former rules were adopted, and that common ownership of radio and television stations in the same market does not threaten diversity or competition.

The Commission's underlying concern with respect to its radio-television cross-ownership prohibition again is whether such combinations threaten diversity and competition. Although the size of the market may be relevant in determining whether the proposed combination will serve the public interest, the Commission's primary question should be whether the market will be sufficiently diverse after the proposed combination. Thus, the focus should be on the number of independently-owned voices after the merger regardless of the size of the market.

An example of common ownership of radio stations and a television station outside the top 50 markets that serves the public interest is Pappas' ownership and operation of Stations KFRE(AM), Fresno, KMPH-FM, Hanford, and KMPH(TV), Visalia, California, all of which are located in the Fresno-Visalia DMA, the 56th ranked television market. *Broadcasting & Cable Yearbook 1996*, p. C-240. Prior to the time that Pappas acquired Stations KFRE(AM) and KMPH-FM, the stations were in severe financial trouble. As a result, Station KFRE(AM) was simulcasting

KMPH-FM's country music format. The latter also aired ABC syndicated news, but no local news or information programming. The stations' operation could be characterized as marginal.

Through Pappas' common ownership of the stations, KMPH(TV) has subsidized the costs of operation of the radio stations which has enabled KMPH-FM to become a 24-hour all news station. The all news format, which includes around-the-clock segments of local news, is made possible only by sharing a joint news staff of 30 employees with Station KMPH(TV). This format, so responsive to the public interest values that the Commission has long embraced, is a rare commodity in markets below the Top 50. Indeed, Pappas is aware of only one other FM station in the country in a below-50 market that offers a 24-hour all news format, and it too is operated in combination with a television station in the same market. Although KMPH-FM has lost a significant amount of money each year it has operated, Pappas hopes that with the support of KMPH(TV), the news station will be self-supporting sometime in the future. This admirable achievement will not be repeated in other markets if the Commission demands divestiture of TV-radio combos.

Moreover, Station KFRE(AM) no longer simulcasts KMPH-FM, but has its own talk format. Thus, Pappas' ownership of the three stations not only has prevented the radio stations from going dark, but has added to the diversity of programming within the Fresno radio market by adding a 24-hour all news FM station as well as an AM talk radio station. In light of the substantial public interest benefits resulting from Pappas' common ownership of Stations KFRE(AM), KMPH-FM and KMPH(TV), Pappas strongly urges the Commission to extend its radio-television cross-ownership presumptive waiver policy to any television market that satisfies the minimum independent voice test. And, those "minimum voices" should include newspapers, cable and other non-broadcast outlets that compete with radio and TV.

B. The Commission Should Extend the Presumptive Waiver Policy to Entities That Seek to Own More Than One Radio Station in the Same Service Where the Proposed Combination Would Otherwise Satisfy the Minimum Voice Test.

As the Commission has noted in this proceeding, the D.C. Circuit has questioned whether there is sufficient public interest rationale for not applying the presumptive waiver policy to proposed radio-television combinations involving more than one radio station in the same service where the proposed combination would otherwise satisfy the top 25 market/30 voice test.[28] In light of the recent changes in the local radio ownership rules, there is no reason not to apply a presumptive waiver policy to entities seeking to own more than one radio station in the same service where the proposed combination would involve radio stations not in excess of the radio rules and satisfy the minimum independent voice test. In the radio-television cross-ownership context, the number of radio stations that a single entity is permitted to own should be governed only by the local radio ownership limits.

C. The Commission Should Reduce the Required Number of Independently-Owned Voices that Must Remain After the Proposed Combination.

As illustrated by Pappas' experience with Stations KFRE(AM), Fresno, KMPH-FM, Hanford, and KMPH(TV), Visalia, California, it is often in the smaller markets where the benefits of common ownership are most likely to occur. But, there may not be 30 independent voices in many smaller markets where a proposed combination would still provide substantial public interest benefits. Therefore, Pappas urges the Commission to modify its minimum independent voice test to require 15 independent voices outside the top 50 television markets. Moreover, as noted above,

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[28] *See Second Further Notice*, at ¶69, citing *WSB v. FCC*, 85 F.3d 695, 701 (D.C. Cir. 1996).

the independent voice analysis should include not only broadcast media, but local cable origination programming as well as other non-broadcast media. In today's diverse and dynamic media world, competition will remain vibrant and no danger of monopolization is apparent.

IV. Conclusion

The multiple and cross-ownership rules the FCC has adopted, and the related exceptions the Commission has employed over the years, have served the public interest well. However, the dynamic broadcast industry has changed, necessitating relaxation of these rules as the millennium approaches. The Commission should embrace the regulatory goals it has accomplished but adjust its ownership restrictions in accordance with the realities of the broadcast marketplace today. Those combinations which have been found to serve the public interest should now be allowed, or at least permitted on a presumptive basis.

As demonstrated herein, the market in which television stations compete is extremely diverse and highly competitive. Due to the significant changes which have occurred in the market since the Commission's television duopoly rule was adopted, the Commission should relax its duopoly rule to permit the common ownership of two television stations in the same DMA where there is no overlap of their Grade A contours. The Commission also should adopt an exception to its relaxed duopoly rule for combinations involving a UHF station regardless of whether the stations are in the same DMA or there is Grade A overlap. Where a proposed combination involves two VHF stations, however, the Commission, in accordance with Congressional intent, should permit the transaction only in unusual and compelling circumstances.

Due to the substantial public interest benefits provided by LMAs, the Commission should follow Congress' directive and grandfather all existing LMAs. In addition, the Commission should permit existing LMAs to be renewed or extended beyond their current term, regardless of any transfer or assignment. Moreover, LMAs should not be treated as an attributable interest so long as one of the stations involved is a UHF station. Even in the event the Commission determines that LMAs should be attributable, and the duopoly rules are not materially relaxed, LMAs should still be permitted where they serve the public interest.

Finally, with respect to the radio-television cross-ownership rule, the Commission's presumptive waiver policy should (i) be extended to any television market that satisfies the minimum independent voice test (with voices defined as all media, not just broadcast), and (ii) apply to radio-television combinations involving more than one radio station in the same service that would otherwise satisfy the radio rules. Furthermore, the Commission should reduce the number of required independently-owned voices that must remain after a proposed combination for stations outside the top 50 television markets to permit combinations that increase programming diversity and economic competition.

Respectfully submitted,

PAPPAS STATIONS PARTNERSHIP

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February 7, 1997

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